

## The CEDR Guide to the EU Platform-to-Business Regulation

### What is the P2B Regulation?

The EU Regulation on platform-to-business relations (“P2B Regulation”), which entered into force in July 2019, is the first ever set of rules laid down by the European Union on the use of mediation to resolve issues between, providers of internet intermediation services (“Online Platform Providers”) on one hand, and their online platform business users on the other.

The P2B Regulation seeks to create a fair, transparent and predictable business environment for the use of online platforms and to ensure balanced and effective dispute resolution.

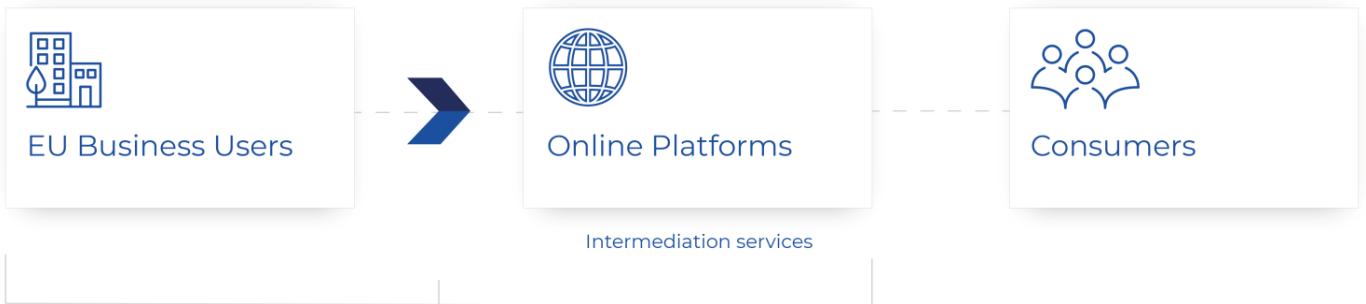
Nearly half of all SMEs in the EU use online marketplaces to sell their services and it is estimated that 7,000 online platforms will fall under the scope of the P2B Regulation. Consequently, the new legal framework will have a significant impact on the platform economy within and outside the EU.

### Who does the P2B Regulation Apply to?

The P2B Regulation applies to all Online Platform Providers servicing businesses in the European Union and United Kingdom (post Brexit).

Online Platform Providers are defined broadly by the P2B Regulation, but explicitly mentioned are:

- Search engines;
- Providers of online market places;
- Social media providers; and
- Application (app) stores.



## Who does the P2B Regulation Not Apply to?

Online Platform Providers which do not intermediate between businesses and consumers will not be subject to the Regulation.

As such, online advertising exchanges and brands selling their own products direct to consumers, without third party sellers, will not be in scope.

## When is the Deadline for Compliance?

12 July 2020.

## Does the P2B Regulation Apply to the UK After Brexit?

Yes.

The P2B Regulation came into force prior to the UK's exit from the EU. Therefore, it is part of the European Union Law which was transposed into domestic UK law in accordance with the European Union (Withdrawal) Act 2018.

## What does the P2B Regulation Require?

The P2B Regulation requires amendments to Online Platform Providers' Terms and Conditions, policies and published information.

With respect to dispute resolution and mediation specifically, Platform Providers are required to:

1. Set-up an internal complaint handling system (Article 11); and
2. Name a minimum of two mediators that the Online Platform Providers would be willing to use to resolve a dispute (Article 12).

It is important to note that Online Platform Providers are not limited to naming just two mediators and in fact naming a mediation provider such as CEDR will comply with the requirements of the P2B Regulation.

Online Platform Providers which employ fewer than 50 persons and which have an annual turnover not exceeding €10 million (small enterprises) are excluded from both of the above obligations.

### **What Types of Disputes are Likely to fall under the Regulation?**

We spoke to Wolf von Kumberg, former European Legal Director and Assistant General Counsel, Northrop Grumman Corporation to get his thoughts on the impact of the P2B Regulation.

He believes the following issues, among others, are likely to arise as a result of the Regulation:

- **Algorithms** - how they push certain suppliers to the top of the results list when you search using a search engine and the need for greater transparency on how the algorithms work.
- **'Most preferred customer status'** – transparency about the criteria applied to provide certain businesses preference over others on a particular site.
- **Data handling** – issues over how data is being gathered, used and protected. This stems from a wider push within the EU to improve data protection and what recourse businesses and consumers have if their data has been misused or not properly controlled.

## Advice for Online Platform Providers

Using Wolf von Kumberg's experience as Assistant General Counsel, we asked what advice he would give to Online Platform Providers.

Here are his main pieces of advice:

- **Article 12** – this article speaks to the naming of at least two mediators but there is scope to utilise a mediation provider. The benefit of using a mediation provider is gaining access to a larger panel of mediators who will have:
  - Greater depth and breadth of experience in handling different types of disputes
  - Greater capability to conduct mediations in terms of time and geographic location
  - Greater scalability – ability to handle a large number of cases. It is unclear how many disputes will arise from the P2B Regulation and there may be a need to scale up very quickly. Using a mediation provider under Article 12 allows you to do this seamlessly.
- **Article 11** – the need to install a complaint handling process. Online Platform Providers should seek to utilise the complaints handling mechanism in conjunction with mediation to bring about a more effective and expedited resolution of any dispute which may arise. The PB Regulation provides provision for the business, business associations and potentially other bodies to bring claims against the Online Platform Provider. Therefore, it is important to have a clear and effective complaints handling process of which mediation should play a pivotal part.

## How can CEDR help Online Platform Providers Comply with the Regulation?

CEDR can work with Online Platform Providers to manage and resolve disputes arising from P2B relationships at each stage of the conflict escalation curve.

1. CEDR have 30 years of experience as an Alternative Dispute Resolution (ADR) provider, working regularly with multi-national corporates and international organisations (such as the UN and EU) to:
  - a. provide conflict resolution consultancy services in the design and administration of conflict resolution processes;
  - b. provide independent complaints handling services; and
  - c. provide mediation services for those disputes that escalate beyond the complaints stage.
2. Naming CEDR as your mediation service provider will satisfy the requirement under Article 12 of the P2B Regulation to name at least two mediators. Doing this will ensure you have access to mediators who are:
  - a. Impartial and independent;
  - b. Able to provide mediation services at a proportionate and affordable price;
  - c. Have extensive business-to-business dispute experience;
  - d. Able to set-up and run a mediation at short notice and to provide services in-person or via telephone or video conferencing.
3. Furthermore, CEDR can use our expertise to work with you to design a cost-effective, practical and tested complaint-handling procedure. CEDR can also provide complaints handling services should you wish to outsource this function.

## Why use CEDR as your Mediation Provider?

CEDR has a panel of 150+ quality assured mediators to resolve disputes at all levels of complexity and claim value.

We provide a range of mediation solutions depending on the type of the dispute. These include:

- telephone and video conference mediations;
- fixed-time period mediations;
- fixed-fee mediations;
- standard one-day mediations; and
- bespoke mediations for complex, multi-party and or multi-jurisdictional disputes.

We have a team of dedicated client relationship associates to guide you and your business customers through the process.

The above capabilities range throughout Europe, covering 15 of the EU's languages and mediators present in 11 Member States as well as the United Kingdom.

## How to Use CEDR as your Mediation Provider

Online Platform Providers can comply with Article 12 by simply naming CEDR in their terms and conditions. You can do this by referring to CEDR as your mediation provider.

Alternatively, you can include the following CEDR model clause such as the one set out below.

However, as an Online Platform Provider you may wish to contact CEDR to design a mediation scheme for your business users. The advantages to designing a platform specific scheme are:

- Adapted Mediation process with its own Agreement and Procedures;
- Specialist Mediator Panel with mediators who can provide the necessary business-to-business experience, geography reach and language capabilities;



- Clear Fee structure appropriate to the value and issues in dispute; and
- Frictionless administration through CEDR's case management system and experienced team of client relationship associates.

## **CEDR Model Mediation Clause for P2B Terms and Conditions**

Every year CEDR publish a number of model mediation clauses to be included in contracts. These can be found on our website [here](#).

Alternatively, please find set out below a model mediation clause tailored to P2B disputes:

'If any dispute arises in connection with this agreement, the parties agree to first try to resolve the dispute through the complaints procedure published herein.

If the dispute is not wholly resolved through the complaint's procedure, then the dispute may be referred at the discretion of the [business user] to the Centre for Effective Dispute Resolution ("CEDR") for mediation. The Parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 [working] days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ('ADR Notice') to the other party[ies] to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR.

[If there is any point on the logistical arrangements of the mediation, other than the nomination of the mediator, upon which the parties cannot agree within 14 [working] days from the date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them.]

## **Get in Touch**

If you would like to discuss how CEDR can assist with a P2B dispute or with compliance with the P2B Regulation please contact CEDR's Director of Commercial Disputes, Lauren McGuirl on [lmcguirl@cedr.com](mailto:lmcguirl@cedr.com) or 020 7536 6060.